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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Michael Primm

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06/15/2006

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EXAMINER

WINDER, PATRICE L

ART UNIT

PAPER NUMBER

2145

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

TRADE MARK OFFICE

Office Action Summary	Application No. 10/057,563	Applicant(s) PRIMM ET AL	
	Examiner Patrice Winder	Art Unit 2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-32, 34 and 37 is/are rejected.
7) ☒ Claim(s) 33, 35 and 36 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 4-7, 9-13, 19-32, 34 and 37 are rejected under 35 U.S.C. 102(e) as

being anticipated by Thamattoor, USPN 6,658,595 (hereafter referred to as

Thamattoor).

3. Regarding claim 1, Thamattoor discloses a method of a peer-to-peer review between first and second network-enabled appliances, the first and the second network-enabled appliances being connected to an interconnected network, the method comprising:

determining the address of the second network-enabled appliance with the first network-enabled appliance, the address of the second network-enabled appliance being associated with the interconnected network ("A" being the first network-enabled appliance and "B" being the second network-enabled appliance, Thamattoor, column 2, lines 56-67; column 3, lines 24-43 and column 4, lines 53-67).

sending a ping message to the second network-enabled appliance from the first network-enabled appliance through the interconnected network (Thamattoor, column 5,

lines 4-15);

selectively responding to the ping message from the first network-enabled appliance using the second network-enabled appliance (Thamattoor, column 5, lines 4-15);

selectively establishing a periodicity between the sending of subsequent periodic ping messages based on information provided to the first network-enabled appliance by the second network enabled appliance (Thamattoor, column 5, lines 16-48); and

sending subsequent ping messages from the first network-enabled appliance to the second network-enabled appliance through the interconnected network at the time intervals based on the established periodicity (Thamattoor, column 5, lines 31-48 and column 8, lines 11-24).

4. Regarding claim 4, Thamattoor further discloses selectively sending a notification message in the event that an expected periodic ping is not received (Thamattoor, column 5, lines 31-48 and column 8, lines 11-24).

5. Regarding claim 5, Thamattoor further discloses the notification method is sent to a remote location (i.e. peer B recovery action by sending alarm, Thamattoor, column 6, lines 1-24 and column 9, lines 4-26).

6. Regarding claim 6, Thamattoor further discloses the notification method is sent to another network-enabled appliance connected to the interconnected network (Thamattoor, column 6, lines 1-24 and column 9, lines 4-26).

7. Regarding claims 7, 9-13 and 19-31, claims 7, 9-13 and 19-31 have similar limitations as claims 1 and 4-6. Therefore, the similar limitations are disclosed under

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Thamattoor for the same reasons set forth in the rejection of claims 1 and 4-6 (Supra 1 and 4-6).

8. Regarding claim 32, Thamattoor taught wherein selectively responding to the ping message includes responding as a function of capabilities of the second network-enabled appliance (column 3, lines 1-7; column 5, lines 4-15).

9. Regarding claim 34, Thamattoor taught selectively responding to the ping message includes responding as a function of available network resources (column 5, lines 36-41)

10. Regarding claim 37, Thamattoor taught the characteristic is selected from the group consisting of location, responsible user, purpose, network region, and responsible party (column 3, lines 7-15).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

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not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 2-3, 8 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thamattoor in view of Scheetz et al., USPN 5,822,302 (hereafter referred to as Scheetz).

14. Regarding claim 2 and 3, Thamattoor substantially discloses the claimed invention. Thamattoor does not specifically disclose the type of ping message used. However, Scheetz, in the same field of endeavor, discloses a ping message uses an HTTP POST or FTP methods. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate specific ping messaging, taught by Scheetz, into the peer system, taught by Thamattoor, in order to improve the speed of notification of outages.

15. Claims 8 and 14-18 have similar limitations as claims 2 and 3. Therefore, the similar limitations are disclosed under Thamattoor-Scheetz for the same reasons set forth in the rejection of claims 2 and 3 (Supra 2 and 3).

Response to Arguments

16. Applicant's arguments filed March 22, 2006 have been fully considered but they are not persuasive.

17. Applicant argues – "Column 5, 11. 4-15 of Thamattoor discuss a processing element A that sends "keepalive" inquiries to a processing element B with the

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processing element B sending a response to each keepalive inquiry from the processing element A. Independent claim 1, however, recites a method of peer-to-peer review between first and second network-enabled appliances including selectively responding to the ping message from the first network-enabled appliance.”

a. Processing element B performs many processing functions, such as for example transferring voice, video or data see column 3, lines 1-7 of Thamattoor. Another function processing element B performs is responding to “keepalive” inquiries from processing element A. When processing element B distinguishes between the processing required for its other functions and the processing required to respond to “keepalive” inquiries, processing element B selectively responds.

18. Applicant argues – “The threshold times (e.g., T_M and T_X) are timeouts used to subsequently determine whether a failure has occurred, rather than being used to determine how often to send a keepalive inquiry. Independent claim 1, however, recites establishing a periodicity between the sending of subsequent ping messages.”

b. Based on whether processing element B sends a response to the “keepalive” signal, processing element A will either continue to send “keepalive” inquiries periodically or processing element A will detect failure. When processing element A chooses to continue sending “keepalive” inquiries periodically, Thamattoor is “establishing a periodicity”.

Allowable Subject Matter

19. Claims 33, 35-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

20. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or suggest selectively responding to the ping message includes responding as a function of the number of active peer-to-peer review relationships that the second or first network-enabled appliance is engaged in.

Conclusion

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

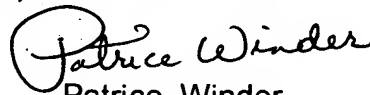
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrice Winder whose telephone number is 571-272-3935. The examiner can normally be reached on Monday-Friday, 10:30 am-7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Patrice Winder
Primary Examiner
Art Unit 2145

May 8, 2006